

REFERENCE TITLE: **postsecondary education commission; duties**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2462

Introduced by
Representative Burns J

AN ACT

**AMENDING SECTIONS 15-1851, 15-1852, 15-1853, 15-1871, 15-1874 AND 15-1875,
ARIZONA REVISED STATUTES; RELATING TO THE COMMISSION FOR POSTSECONDARY
EDUCATION.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-1851, Arizona Revised Statutes, is amended to
3 read:

4 15-1851. Commission for postsecondary education; purpose;
5 report; members; terms; powers and duties;
6 compensation; quorum; personal liability; definition

7 ~~A. The commission for postsecondary education is established as the~~
8 ~~postsecondary review entity for this state for the conduct, supervision and~~
9 ~~coordination of the review of postsecondary education institutions in order~~
10 ~~to determine the eligibility of those institutions for student financial aid~~
11 ~~monies pursuant to the provisions of part H, subpart one of the higher~~
12 ~~education amendments of 1992 (P.L. 102-325; 106 Stat. 638; 20 United States~~
13 ~~Code section 1099a). The commission shall accomplish the purpose of this~~
14 ~~subsection through the accumulation of information, the performance of~~
15 ~~studies and the determination of compliance by the postsecondary education~~
16 ~~institutions with the provisions of part H, subpart one of the higher~~
17 ~~education amendments of 1992. The review authority of the commission shall~~
18 ~~be limited to circumstances where the United States department of education~~
19 ~~has referred an institution to the commission for review or where the United~~
20 ~~States department of education has approved the review of an institution in~~
21 ~~accordance with criteria established by the United States department of~~
22 ~~education. The commission shall keep records of its activities, and the~~
23 ~~commission shall provide information when requested to the United States~~
24 ~~secretary of education for financial and compliance audits and for~~
25 ~~institution evaluation. The scope of authority of the commission acting as a~~
26 ~~postsecondary review entity to review any educational institution is limited~~
27 ~~specifically to compliance by the institution with title IV, part H, subpart~~
28 ~~one of the higher education amendments of 1992. Any review of any~~
29 ~~institution conducted by the commission shall be performed in the context of~~
30 ~~the institution's individual mission and purposes. The commission shall not~~
31 ~~exercise planning, policy, coordinating, supervisory, budgeting or~~
32 ~~administrative powers over any postsecondary institution in this state.~~

33 ~~B.~~ A. The commission **FOR POSTSECONDARY EDUCATION IS ESTABLISHED AND**
34 shall ~~also~~ administer the applicable programs identified under section 1203
35 of the higher education act amendments of 1998 (P.L. 105-244), including the
36 leveraging educational assistance partnership program, the federal family
37 education loan program and the Paul Douglas teacher scholarships program, and
38 shall supervise the state guarantee agency under the higher education act
39 amendments of 1998.

40 ~~C.~~ B. In addition to the responsibilities prescribed in ~~subsections A~~
41 ~~and B-~~ **SUBSECTION A** of this section, the commission shall:

42 1. Provide a forum to public and private postsecondary education
43 institutions for discussion of issues of mutual interest, including the
44 following:

- 1 (a) The postsecondary needs of unserved and underserved individuals in
2 this state.
- 3 (b) The resources of public and private institutions, organizations
4 and agencies that are located in this state and that are capable of providing
5 postsecondary education opportunities.
- 6 (c) Enrollment demand and public policy options to meet statewide
7 needs for postsecondary education services.
- 8 (d) Cooperative comprehensive instructional and capital planning.
- 9 2. Provide reports pursuant to this subsection on discussions of
10 issues of mutual interest.
- 11 3. Coordinate and promote collaborative studies on issues of mutual
12 interest to public and private postsecondary education institutions.
- 13 4. Compile and disseminate information to the public regarding
14 postsecondary education opportunities in this state.
- 15 5. Prepare an annual report that summarizes the results of the
16 commission's activities prescribed in this section and section 15-1852. The
17 annual report shall be submitted to the speaker of the house of
18 representatives, the president of the senate, the governor and the Arizona
19 state library, archives and public records by December 28.
- 20 ~~D.~~ C. The commission consists of the executive director of the
21 Arizona board of regents, the executive director of the state board for
22 private postsecondary education and the following additional members who
23 shall be appointed by the governor pursuant to section 38-211:
- 24 1. Two members who hold senior executive or managerial positions in a
25 university under the jurisdiction of the Arizona board of regents.
- 26 2. Two members who hold senior executive or managerial positions in a
27 community college district, one representing a community college district in
28 a county with a population of five hundred thousand persons or more and one
29 representing a community college district in a county with a population of
30 less than five hundred thousand persons.
- 31 3. Two members who hold senior executive or managerial positions in
32 private postsecondary institutions of higher education that are licensed
33 under title 32, chapter 30, that are located in this state, that offer
34 bachelor or higher degrees and that are accredited by a regional
35 accreditation agency approved by the United States department of education.
- 36 4. Two members who hold senior executive or managerial positions in
37 private postsecondary institutions of higher education that are licensed
38 under title 32, chapter 30, that are located in this state, that offer
39 vocational education programs and that are accredited by a national
40 accreditation agency approved by the United States department of education.
- 41 5. One member who holds a senior executive or managerial position in a
42 private cosmetology school that is licensed under title 32, chapter 5, that
43 is located in this state, that offers cosmetology programs approved by the
44 board of cosmetology and that is accredited by a national accreditation
45 agency approved by the United States department of education.

1 6. One member who holds a senior executive or managerial position in
2 an institution that is licensed under title 32, chapter 23 or under the
3 provisions of 14 Code of Federal Regulations part 147, that offers vocational
4 education programs at the postsecondary level, that is located in this state
5 and that is not an institution that is qualified under any other category.

6 7. One member who has held a senior executive or managerial level
7 position in commerce or industry in this state for at least three years
8 before the member's appointment and who is not qualified to serve under any
9 other category.

10 8. Two members who hold senior executive or managerial positions in
11 the high school education system in this state.

12 9. One member who is an owner, operator or administrator of a charter
13 school in this state.

14 ~~E.~~ D. Members of the commission appointed pursuant to subsection ~~D-~~
15 C, paragraphs 1 through 9 of this section shall serve four year
16 terms. Appointed members of the commission shall be residents of this state.
17 Appointed members of the commission at all times during their terms shall
18 continue to be eligible for appointment under the category that they were
19 appointed to represent. Terms of appointed members of the commission begin
20 on the third Monday in January. No appointed member of the commission may
21 serve more than two consecutive terms.

22 ~~F.~~ E. The executive director of the Arizona board of regents and the
23 executive director of the state board for private postsecondary education
24 serve as members of the commission during their respective terms of office
25 and are not eligible to vote with respect to the commission's review of any
26 postsecondary institution.

27 ~~G.~~ F. Members appointed pursuant to subsection ~~D-~~ C, paragraphs 1
28 through 9 of this section are eligible to receive compensation pursuant to
29 section 38-611 for each day spent in the performance of commission duties and
30 may be reimbursed for expenses properly incurred in connection with the
31 attendance at meetings or hearings of the commission.

32 ~~H.~~ G. The governor shall appoint a chairman from among the members of
33 the commission who shall serve a one year term that begins on the third
34 Monday in January.

35 ~~I.~~ H. Except as provided in subsection ~~J-~~ I of this section, a
36 majority of the members of the commission constitutes a quorum for the
37 transaction of commission business. The vote of a majority of the quorum
38 constitutes authority for the commission to act.

39 ~~J.~~ I. For all purposes relating to title IV, part H, subpart one of
40 the higher education amendments of 1992 the commission membership shall
41 consist only of the members appointed pursuant to subsection ~~D-~~ C, paragraphs
42 1 through 7 of this section, and all commission actions taken pursuant to
43 title IV, part H, subpart one of the higher education ~~act~~ AMENDMENTS of 1992
44 require the affirmative vote of at least six members.

1 ~~K.~~ J. Members of the commission are immune from personal liability
2 with respect to all actions that are taken in good faith and within the scope
3 of the commission's authority.

4 ~~L.~~ K. For the purposes of this section, "community college district"
5 means a community college district that is established pursuant to sections
6 15-1402 and 15-1403 and that is a political subdivision of this state.

7 Sec. 2. Section 15-1852, Arizona Revised Statutes, is amended to read:
8 15-1852. Additional powers and duties

9 A. In addition to the powers and duties prescribed in section 15-1851,
10 the commission for postsecondary education shall:

- 11 1. Meet at least four times each year.
- 12 2. Adopt rules to carry out the purposes of this article.
- 13 3. Administer and enforce ~~the provisions of~~ this article and rules
14 adopted pursuant to this article.
- 15 4. Keep a record of its proceedings.
- 16 5. Contract, on behalf of this state, with the United States secretary
17 of education for the purpose of complying with the provisions of part H of
18 the higher education amendments of 1992.

19 ~~6. Enter into agreements and contracts with state regulatory agencies
20 or entities, accrediting bodies and other peer review systems for the purpose
21 of complying with the provisions of title IV program eligibility reviews as
22 set forth in part H of the higher education amendments of 1992. Agreements
23 and contracts executed pursuant to this subsection shall be for the purpose
24 of conducting fact-finding activities, eligibility reviews, compliance
25 assessments and recommendations, program reviews and consumer complaint
26 studies. The review authority of the commission shall be limited to those
27 circumstances specified in section 15-1851, subsection A. The commission
28 shall provide sufficient monies to the agency or contractor to perform review
29 functions.~~

30 ~~7. Establish procedures for the performance of the title IV
31 eligibility reviews as prescribed in part H, subpart one of the higher
32 education amendments of 1992, the evaluation and assessment of the reviews
33 performed, the evaluation and assessment of the postsecondary institution's
34 initial and continuing title IV eligibility, the notification of the results
35 of the reviews and the enforcement of an appeals process that provides for
36 due process for postsecondary education institutions. The review authority
37 of the commission shall be limited to those circumstances specified in
38 section 15-1851, subsection A.~~

39 ~~8. Establish procedures by which agencies of this state that are
40 responsible for oversight of postsecondary institutions receive notification
41 of eligibility reviews, eligibility determinations and actions and other
42 actions taken or planned against postsecondary institutions.~~

43 ~~9.~~ 6. Comply with ~~the provisions of~~ title 38, chapter 3, article 3.1
44 and title 39.

45 B. The commission may:

- 1 1. Adopt an official seal.
- 2 2. Contract.
- 3 3. Sue and be sued.
- 4 4. Receive, hold, make and take leases of and sell personal property
- 5 for the benefit of the commission.
- 6 5. Employ permanent or temporary personnel as the commission deems
- 7 necessary to carry out this article. The commission may designate the duties
- 8 of these personnel. The commission employees are subject to title 41,
- 9 chapter 4, articles 5 and 6.
- 10 6. Conduct investigations, hold hearings and determine methods of
- 11 enforcement of ~~the provisions of~~ this article.
- 12 7. Issue subpoenas to compel the attendance of witnesses and the
- 13 production of documents, administer oaths, take testimony, hear proof and
- 14 receive exhibits into evidence.
- 15 8. Establish policy centers under its control to conduct studies.
- 16 9. Coordinate and promote studies of interest to postsecondary
- 17 institutions in this state.
- 18 C. The commission is exempt from title 41, chapter 6 but shall adopt
- 19 rules in a manner substantially similar to title 41, chapter 6.
- 20 Sec. 3. Section 15-1853, Arizona Revised Statutes, is amended to read:
- 21 15-1853. Funding; federal monies; postsecondary education fund;
- 22 report
- 23 A. The postsecondary education fund is established consisting of:
- 24 1. Monies appropriated by the legislature.
- 25 2. Monies received from state agencies and political subdivisions of
- 26 this state.
- 27 3. Monies received from the United States government, including monies
- 28 received from the United States department of education pursuant to
- 29 subsection B of this section.
- 30 4. Gifts, grants and donations received from any private source to
- 31 carry out the duties and responsibilities of the commission.
- 32 B. The commission may receive monies distributed by the United States
- 33 department of education for the reimbursement of the costs of performing
- 34 review requirements. The costs may include expenses for ~~the instruction of~~
- 35 ~~personnel needed to serve the purpose of section 15-1851, subsection A,~~ the
- 36 supplementation of existing review functions, work performed by
- 37 subcontractors or consultants in connection with the review functions of the
- 38 commission and any other administrative expenses necessary for compliance
- 39 with part H, subpart one of the higher education amendments of 1992. No more
- 40 than thirteen per cent of amounts received by the commission from the United
- 41 States department of education may be utilized for administrative purposes by
- 42 the commission.
- 43 C. The commission shall administer the fund in compliance with the
- 44 requirements of this article. The commission shall separately account for
- 45 monies received from each source listed in subsection A of this section and

1 may establish accounts and subaccounts of the fund as necessary to carry out
2 the requirements of this subsection.

3 D. Monies obtained pursuant to subsection A, paragraphs 1 through 3 of
4 this section are subject to legislative appropriation. The commission shall
5 not use these monies for purposes other than those designated by special line
6 items for which the monies are received.

7 E. Monies obtained pursuant to subsection A, paragraph 4 of this
8 section are continuously appropriated. These monies shall be used in
9 accordance with the requests of the donor. If no request is specified, the
10 monies may be used for additional responsibilities of the ~~board~~ COMMISSION
11 prescribed in section 15-1851, subsection ~~C~~ B and section 15-1852,
12 subsection B, paragraphs 8 and 9.

13 F. The commission shall report quarterly to the joint legislative
14 budget committee on fund deposits and expenditures.

15 Sec. 4. Section 15-1871, Arizona Revised Statutes, is amended to read:
16 15-1871. Definitions

17 In this article, unless the context otherwise requires:

18 1. "Account" means an individual trust account in the fund established
19 as prescribed in this article.

20 2. "Account owner" means the person who enters into a tuition savings
21 agreement pursuant to this article, who is an account owner within the
22 meaning of section 529 of the internal revenue code and who is designated at
23 the time an account is opened as having the right to withdraw monies from the
24 account before the account is disbursed to or for the benefit of the
25 designated beneficiary.

26 3. "Commission" means the commission for postsecondary education
27 established by section 15-1851.

28 4. "Committee" means the family college savings program oversight
29 committee.

30 5. "Designated beneficiary" means a person who qualifies as a
31 designated beneficiary under section 529 of the internal revenue code and,
32 except as provided in section 15-1875, subsections ~~R~~ P and ~~S~~ Q, with
33 respect to an account, who is designated at the time the account is opened as
34 the person whose higher education expenses are expected to be paid from the
35 account or, if this designated beneficiary is replaced in accordance with
36 section 15-1875, subsections ~~E, F and G~~ D, E AND F, the replacement
37 beneficiary.

38 6. "Eligible educational institution" means an institution of higher
39 education that qualifies under section 529 of the internal revenue code as an
40 eligible educational institution.

41 7. "Financial institution" means any bank, commercial bank, national
42 bank, savings bank, savings and loan association, credit union, insurance
43 company, brokerage firm or other similar entity that is authorized to do
44 business in this state.

1 8. "Fund" means the family college savings program trust fund that
2 constitutes a public instrumentality of this state AND THAT IS established by
3 section 15-1873.

4 9. "Member of the family" means any of the following:

5 (a) A son or daughter of a person or a descendant of the son or
6 daughter of the person.

7 (b) A stepson or stepdaughter of a person.

8 (c) A brother, sister, stepbrother or stepsister of a person. For the
9 purposes of this subdivision, "brother" and "sister" includes a brother or
10 sister by the half-blood.

11 (d) The father or mother of a person or the ancestor of the father or
12 mother of a person.

13 (e) A stepfather or stepmother of a person.

14 (f) A son or daughter of a person's brother or sister. For the
15 purposes of this subdivision, "brother" and "sister" includes a brother or
16 sister by the half-blood.

17 (g) A brother or sister of the person's father or mother. For the
18 purposes of this subdivision, "brother" and "sister" includes a brother or
19 sister by the half-blood.

20 (h) A son-in-law, daughter-in-law, father-in-law, mother-in-law,
21 brother-in-law or sister-in-law of a person.

22 (i) The spouse of a person or the spouse of any individual described
23 in this paragraph.

24 (j) A first cousin of a person.

25 (k) Any individual who meets the criteria for family membership
26 described in this paragraph as a result of legal adoption.

27 10. "Nonqualified withdrawal" means a withdrawal from an account other
28 than one of the following:

29 (a) A qualified withdrawal.

30 (b) A withdrawal made as the result of the death or disability of the
31 designated beneficiary of an account.

32 (c) A withdrawal that is made on the account of a scholarship, or the
33 allowance or payment described in section 135(d)(1)(B) or (C) of the internal
34 revenue code, and that is received by the designated beneficiary, but only to
35 the extent of the amount of this scholarship, allowance or payment.

36 (d) A rollover or change of designated beneficiary.

37 11. "Person" means an individual, an individual's legal representative
38 or any other legal entity authorized to establish a savings account under
39 section 529 of the internal revenue code and the corresponding regulations.

40 12. "Program" means the family college savings program THAT IS
41 established under this article AND that constitutes a qualified tuition
42 program as defined in section 529 of the internal revenue code.

43 13. "Qualified higher education expenses" means tuition, fees, books,
44 supplies, room and board and equipment required for enrollment or attendance
45 of a designated beneficiary at an eligible educational institution and

1 expenses for special needs services in the case of a special needs
2 beneficiary that are incurred in connection with enrollment or attendance, if
3 these expenses meet the definition of qualified higher education expenses in
4 section 529 of the internal revenue code.

5 14. "Qualified withdrawal" means a withdrawal from an account to pay
6 the qualified higher education expenses of the designated beneficiary of the
7 account, but only if the withdrawal is made in accordance with this article.

8 15. "Section 529 of the internal revenue code" means section 529 of the
9 internal revenue code of 1986, as amended, and the final regulations issued
10 pursuant to that section.

11 16. "Trust interest" means an account owner's interest in the fund
12 created by a tuition savings agreement for the benefit of a designated
13 beneficiary.

14 17. "Tuition savings agreement" means an agreement between the
15 commission, as trustee of the fund, and an account owner that creates an
16 interest in the fund and that provides for participation in the program.

17 Sec. 5. Section 15-1874, Arizona Revised Statutes, is amended to read:
18 15-1874. Use of contractor as account depository and manager

19 A. The commission shall implement the operation of the program through
20 the use of one or more financial institutions to act as the depositories of
21 the fund and managers of the program. Under the program, persons may submit
22 applications for enrollment in the program and establish accounts in the fund
23 at the financial institution. Monies paid by account owners to the fund for
24 deposit in accounts maintained by the fund at a financial institution shall
25 be paid to the financial institution as an agent of the fund and the tuition
26 savings agreements shall provide that all monies paid by account owners to
27 fund accounts held at financial institutions are being paid to the fund.

28 B. The committee shall solicit proposals from financial institutions
29 to act as the depositories of fund monies and managers of the program.
30 Financial institutions that submit proposals must describe the financial
31 instruments that will be held in accounts. The commission shall select
32 proposals from financial institutions to act as depositories and managers and
33 ~~that~~ the solicitation and selection process is exempt from the procurement
34 code requirements of title 41, chapter 23.

35 C. On the recommendation of the committee, the commission shall select
36 the financial institution or institutions to implement ~~the operation of~~ the
37 program from among bidding financial institutions that demonstrate the most
38 advantageous combination, both to potential program participants and this
39 state, of the following factors:

40 1. Financial stability and integrity.

41 2. The safety of the investment instruments being offered, taking into
42 account any insurance provided with respect to these instruments.

43 3. The ability of the investment instruments to track estimated costs
44 of higher education as calculated by the commission and provided by the
45 financial institution to the account holder.

- 1 4. The ability of the financial institutions, directly or through a
2 subcontract, to satisfy record keeping and reporting requirements.
- 3 5. The financial institution's plan for promoting the program and the
4 investment it is willing to make to promote the program.
- 5 6. The fees, if any, proposed to be charged to persons for maintaining
6 accounts.
- 7 7. The minimum initial deposit and minimum contributions that the
8 financial institution will require for the investment of fund monies and the
9 willingness of the financial institution to accept contributions through
10 payroll deduction plans and other deposit plans.
- 11 8. Any other benefits to this state or its residents included in the
12 proposal, including an account opening fee payable to the commission by the
13 account owner and an additional fee from the financial institution for
14 statewide program marketing by the commission.
- 15 D. The commission shall enter into a contract with a financial
16 institution, or except as provided in subsection E of this section, contracts
17 with financial institutions, to serve as program managers and depositories.
18 Program management contracts shall provide the terms and conditions by which
19 financial institutions shall sell interests in the fund to account owners,
20 invest monies in the fund and manage the program.
- 21 E. The commission may select more than one financial institution and
22 investment for the program if both of the following conditions exist:
- 23 1. The United States internal revenue service has provided guidance
24 that giving a contributor a choice of two investment instruments under a
25 state plan will not cause the plan to fail to qualify for favorable tax
26 treatment under section 529 of the internal revenue code.
- 27 2. The commission concludes that the choice of instrument vehicles is
28 in the best interest of college savers and will not interfere with the
29 promotion of the program.
- 30 F. A program manager shall:
- 31 1. Take all action required to keep the program in compliance with the
32 requirements of this article and all action not contrary to this article or
33 its contract to manage the program so that it is treated as a qualified
34 tuition plan under section 529 of the internal revenue code.
- 35 2. Keep adequate records of each of the fund's accounts, keep each
36 account segregated from each other account and provide the commission with
37 the information necessary to prepare statements required by section 15-1875,
38 subsections ~~0, P and Q~~ M, N AND O or file these statements on behalf of the
39 commission.
- 40 3. Compile and total information contained in statements required to
41 be prepared under section 15-1875, subsections ~~0, P and Q~~ M, N AND O and
42 provide these compilations to the commission.
- 43 4. If there is more than one program manager, provide the commission
44 with this information to assist the commission to determine compliance with
45 section 15-1875, subsection ~~N~~ L.

1 5. Provide representatives of the commission, including other
2 contractors or other state agencies, access to the books and records of the
3 program manager to the extent needed to determine compliance with the
4 contract.

5 6. Hold all accounts in the name of and for the benefit of the fund
6 and this state.

7 G. Any contract executed between the commission and a financial
8 institution pursuant to this section shall be for a term of at least three
9 years and not more than seven years.

10 H. The commission may terminate a contract with a financial
11 institution at any time for good cause on the recommendation of the
12 committee. If a contract is terminated pursuant to this subsection, the
13 commission shall take custody of accounts held at that financial institution
14 and shall seek to promptly transfer the accounts to another financial
15 institution that is selected as a program manager and into investment
16 instruments as similar to the original investments as possible.

17 I. If the commission determines not to renew the appointment of a
18 financial institution as a program manager, the commission may take action
19 consistent with the interests of the program and the accounts and in
20 accordance with its duties as the trustee of the fund, including termination
21 of all services or continuation of certain management and administrative
22 services of that financial institution for accounts of the program managed by
23 that financial institution during its term as a program manager, if any
24 continuation of services is only permitted under the following conditions:

25 1. The commission and the financial institution ~~enters~~ ENTER into a
26 written agreement specifying the rights of the program and the commission and
27 the responsibilities of the financial institution, including the standards
28 that continue to be applicable to the accounts as accounts of the program.

29 2. Any services provided by the financial institution to accounts
30 continue to be subject to the control of the commission as the trustee of the
31 fund with responsibility of all accounts of the program.

32 Sec. 6. Section 15-1875, Arizona Revised Statutes, is amended to read:
33 15-1875. Program requirements

34 A. The program shall be operated through the use of accounts in the
35 fund established by account owners. Payments to the fund for participation in
36 the program shall be made by account owners pursuant to tuition savings
37 agreements. An account may be opened by any person who desires to invest in
38 the fund and to save to pay qualified higher education expenses by satisfying
39 each of the following requirements:

40 1. Completing an application in the form prescribed by the
41 commission. The application shall include the following information:

42 (a) The name, address and social security number or employer
43 identification number of the contributor.

44 (b) The name, address and social security number of the account owner
45 if the account owner is not the contributor.

1 (c) The name, address and social security number of the designated
2 beneficiary.

3 (d) The certification relating to no excess contributions required by
4 subsection ~~N~~ L.

5 (e) Any other information that the commission may require.

6 2. Paying the one-time application fee established by the commission.

7 3. Making the minimum contribution required by the commission or by
8 opening an account.

9 4. Designating the type of account to be opened if more than one type
10 of account is offered.

11 B. Any person may make contributions to an account after the account
12 is opened.

13 C. Contributions to accounts may be made only in cash.

14 ~~D. Account owners may withdraw all or part of the balance from an
15 account on sixty days' notice, or a shorter period as may be authorized by
16 the commission, under rules prescribed by the commission. These rules shall
17 include provisions that will generally enable the commission or program
18 manager to determine if a withdrawal is a nonqualified withdrawal or a
19 qualified withdrawal. The rules may, but need not, require one or more of
20 the following:~~

21 ~~1. Account owners seeking to make a qualified withdrawal or other
22 withdrawal that is not a nonqualified withdrawal shall provide
23 certifications, copies of bills for qualified higher education expenses or
24 other supporting material.~~

25 ~~2. Qualified withdrawals from an account shall be made only by a check
26 payable as designated by the account owner.~~

27 ~~3. Withdrawals not meeting certain requirements shall be treated as
28 nonqualified withdrawals by the program manager, and if these withdrawals are
29 not nonqualified withdrawals, the account owner must seek refunds of
30 penalties, if any, directly from the commission.~~

31 ~~E.~~ D. An account owner may change the designated beneficiary of an
32 account to an individual who is a member of the family of the former
33 designated beneficiary in accordance with procedures established by the
34 commission.

35 ~~F.~~ E. On the direction of an account owner, all or a portion of an
36 account may be transferred to another account of which the designated
37 beneficiary is a member of the family of the designated beneficiary of the
38 transferee account.

39 ~~G.~~ F. Changes in designated beneficiaries and rollovers under this
40 section are not permitted if the changes or rollovers would violate either of
41 the following:

42 1. Subsection ~~N~~ L, relating to excess contributions.

43 2. Subsection ~~K~~ I, relating to investment choice.

44 ~~H. In the case of any nonqualified withdrawal from an account, a
45 penalty may be imposed if the penalty is required for purposes of qualifying~~

~~1 the program as a qualified tuition program under section 529 of the internal
2 revenue code. The commission may adopt rules to establish the parameters for
3 the assessment of penalties. Any penalties assessed shall be paid to the
4 commission for use in operating and marketing the program and for student
5 financial aid.~~

~~I.~~ G. Each account shall be maintained separately from each other
7 account under the program.

~~J.~~ H. Separate records and accounting shall be maintained for each
9 account for each designated beneficiary.

~~K.~~ I. No contributor to, account owner of or designated beneficiary
11 of any account may direct the investment, within the meaning of section 529
12 of the internal revenue code, of any contributions to an account or the
13 earnings from the account.

~~L.~~ J. If the commission terminates the authority of a financial
15 institution to hold accounts and accounts must be moved from that financial
16 institution to another financial institution, the commission shall select the
17 financial institution and type of investment to which the balance of the
18 account is moved unless the internal revenue service provides guidance
19 stating that allowing the account owner to select among several financial
20 institutions that are then contractors would not cause a plan to cease to be
21 a qualified tuition plan.

~~M.~~ K. Neither an account owner nor a designated beneficiary may use
23 an interest in an account as security for a loan. Any pledge of an interest
24 in an account is of no force and effect.

~~N.~~ L. On the recommendation of the committee, the commission shall
26 adopt rules to prevent contributions on behalf of a designated beneficiary in
27 excess of those necessary to pay the qualified higher education expenses of
28 the designated beneficiaries. The rules shall address the following:

1. Procedures for aggregating the total balances of multiple accounts
30 established for a designated beneficiary.

2. The establishment of a maximum total balance for the purpose of
32 prohibiting contributions to accounts established for a designated
33 beneficiary if the contributions would cause the maximum total balance to be
34 exceeded.

3. The commission shall review the quarterly reports received from
36 participating financial institutions and certify that the balance in all
37 qualified tuition programs, as defined in section 529 of the internal revenue
38 code, of which that person is the designated beneficiary does not exceed the
39 lesser of:

(a) A maximum college savings amount established by the commission
41 from time to time.

(b) The cost in current dollars of qualified higher education expenses
43 that the contributor reasonably anticipates the designated beneficiary will
44 incur.

1 4. Requirements that any excess contributions with respect to a
2 designated beneficiary be promptly withdrawn in a nonqualified withdrawal or
3 rolled over to another account in accordance with this section.

4 ~~Q.~~ M. If there is any distribution from an account to any person or
5 for the benefit of any person during a calendar year, the distribution shall
6 be reported to the internal revenue service and the account owner or the
7 designated beneficiary to the extent required by federal law.

8 ~~P.~~ N. The financial institution shall provide statements to each
9 account owner at least once each year within thirty-one days after the twelve
10 month period to which they relate. The statement shall identify the
11 contributions made during a preceding twelve month period, the total
12 contributions made through the end of the period, the value of the account as
13 of the end of this period, distributions made during this period and any
14 other matters that the commission requires be reported to the account owner.

15 ~~Q.~~ O. Statements and information returns relating to accounts shall
16 be prepared and filed to the extent required by federal or state tax law.

17 ~~R.~~ P. A state or local government or organizations described in
18 section 501(c)(3) of the internal revenue code may open and become the
19 account owner of an account to fund scholarships for persons whose identity
20 will be determined after an account is opened.

21 ~~S.~~ Q. In the case of any account described in subsection ~~R- P~~, the
22 requirement that a designated beneficiary be designated when an account is
23 opened does not apply and each person who receives an interest in the account
24 as a scholarship shall be treated as a designated beneficiary with respect to
25 the interest.

26 ~~T.~~ R. Any social security numbers, addresses or telephone numbers of
27 individual account holders and designated beneficiaries that come into the
28 possession of the commission are confidential, are not public records and
29 shall not be released by the commission.

30 ~~U.~~ S. An account owner may transfer ownership rights to another
31 eligible account owner.

32 ~~V.~~ T. An account owner may designate successor account owners.